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Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-502

ANNIE NELL RATLIFF and HENRY RATLIFF,
PETITIONERS,

versus

COOPER LABORATORIES, INC., RESPONDENT

ALICE W. NICHOLS, PETITIONER,

versus

STERLING DRUG COMPANY, INC., A CORPORATION,
RESPONDENT

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-302

ANNIE NELL RATLIFF AND HENRY RATLIFF,
PETITIONERS,

versus

COOPER LABORATORIES, INC., RESPONDENT

ALICE W. NICHOLS, PETITIONER,

versus

STERLING DRUG COMPANY, INC., A CORPORATION,
RESPONDENT

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners pray that this Court grant rehearing of its order of November 9, 1971, denying the petition for writ of *certiorari* (Mr. Justice Douglas being of the opinion that *certiorari* should be granted and the case set down for oral argument) and that a writ of *certiorari* issue to review the judgment of the Court of Appeals for the Fourth Circuit in the above-entitled case as prayed for in the petition filed August 30, 1971.

REASONS FOR REHEARING AND ISSUING THE WRIT

1. A substantial ground available to petitioners for the issuance of a writ of *certiorari,* although not previously presented, or, perhaps, not previously stressed nor sufficiently delineated and clarified by citation of compelling authority in support thereof, is that the decision of the Court below is in direct conflict with the requirements of the Privileges and Immunities clause of the United States Constitution (Article 4, sec. 2, cl. 1) which secures citizens of one state the right to resort to the Courts of another, equally with the citizens of the latter state.

That citizens of one state are secured the right to resort to the Courts of another, equally with the citizens of the latter state under Article 4, sec. 2, cl. 1 of the Constitution, a right which was recognized and accorded to petitioners by the District Court, but denied to them by the decision of the Court of Appeals, has many times been enunciated by the decisions of this Court.

Missouri Pac. R. Co. v. Clarendon Boat Oar Co., 257 U. S. 533;

Canadian Northern Ry. Co. v. Eggen, 252 U. S. 553;

McKett v. St. Louis & S. F. Ry. Co., 292 U. S. 230;

Carfield v. Coryell, Fed. Cas. No. 3,230, 4 Wash. C. C. 371, 381.

The statement by Mr. Chief Justice Taft in *Missouri Pac. R. Co. v. Clarendon Boat Oar Co., supra,* clearly expresses this fundamental right, wherein he said:

> "Under section 2 of article 4 of the federal Constitution, the citizens of each state are entitled to all privileges and immunities of citizens in the several states. **This secures citizens of one state the right to resort to the courts of another, equally with the citizens of another state** * * *." (Emphasis added.)

There is thus presented a constitutional issue which results from the conflict between the test of Due Process, as measured by the decision of the Court below, and the Privileges and Immunities clause of the Constitution. This issue far transcends the bounds of these cases and the individual rights of only the petitioners, and is infinitely disturbing in its implications as it affects the rights of all citizens under Article 4, section 2, clause 1 of the Constitution.

By the decision of the Court below, federal Due Process, in determining the amenability of foreign corporations to the jurisdiction of state and federal courts of a forum state, is required to be measured not only by the ties and contacts of the corporation with the forum state, but also by the citizenship of the party who brings the action; that is, if the plaintiff is not a citizen of the forum state and has no other attachment thereto, the ties and contacts of the foreign corporation with the state are required to be more extensive to satisfy Due Process than those ties and contacts required to satisfy Due Process if the plaintiff's only attachment to the forum state is that of citizenship thereof.

An analysis of the foregoing test of Due Process, as measured by the Court below, makes it obvious that a citizen of another state is denied the right to resort to the courts of a state equally with the citizens of the latter state, and constitutes a discrimination between citizens of different states no less invidious than that which was deciared unconstitutional by this Court in *Shapiro v. Thompson*, 394 U. S. 618, and *Pease v. Hansen, Director, Cascade County Department of Public Welfare, et al.*, ... U. S. .... (No. 70-5376) decided on November 16, 1971. It thus strikes at the very heart of one of the most fundamental rights guaranteed to all citizens under Article 4, section 2, clause 1 of the Constitution. This right is basic and important in our

system of justice, and a denial of it will have far reaching consequences. Many citizens of their own states whose only avenue of redress for wrongs committed against them by corporations is by resort to the courts of another state where such corporations are doing business, and thus amenable to jurisdiction of the latter state under its "service of process" statute, will be without a forum to obtain any redress for the wrongs committed against them.

Unless this Court resolves the issue presented here, the right of all citizens under article 4, section 2, clause 1 to resort to the courts of another state equally with the citizens of the latter state will be placed in jeopardy and effectively destroyed.

2. The question continues to be one of nation-wide importance to all citizens who have causes of actions against foreign corporations which are not maintainable in the citizens' own states; and is of like importance to all corporations which engage in interstate or multi-state activities, particularly in the light of the statutes of many states which provide for service of process upon foreign corporations doing business in a state, without regard to whether the actions against such corporations are brought by those who are citizens of the state or of another state.

Although "the general and recognizable trend of judicial decisions is in favor of a broad rather than a narrow concept of jurisdiction" over corporations engaged in multi-state business, the courts will now be faced with the problem of narrowing the concept of jurisdiction over such corporations and deciding the constitutionality of the "service of process" statutes as applied to citizens of another state, a problem not without great difficulty when confronted with the conflict between the Privileges and Immunities clause and the test of federal Due Process as measured by the decision of the Court below.

The writer fully recognizes that rehearing "ought not to be deemed normal procedure", *Western Pacific Railroad case,* 345 U. S. 247, 270, and that the volume of petitions for *certiorari* presented at the beginning of the term had placed an unusually heavy burden on this Court sitting without two of its members when the petition in these cases was passed upon. But, certainly, the present cases have such far reaching consequences for so many individuals and corporations, are so important to and have such great impact upon the just, efficient and orderly administration of justice, and affect so closely and vitally one of the most fundamental and basic rights secured to all citizens under the Constitution, as to call for a review by this Court of the problems presented herein in order that they may be resolved.

CONCLUSION

For the reasons set forth above and in the petition for writ of *certiorari,* it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of *certiorari* issue to the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of Rule 58.

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